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October 17, 2004

Arthur L. Williams, Director
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204

RE: Draft Strategic Toxic Air Reduction (STAR) Program Regulations

Dear Mr. Williams:

These comments are tendered on behalf of the American Lung Association of Kentucky, a non-profit health organization, whose mission is to prevent lung disease and to promote lung health. We begin our consideration of this proposed regulatory package with a strong bias that everyone has a basic right to breathe air that is clean and healthful and that, conversely, no one's health should be jeopardized by the air he or she breathes.

INTRODUCTION

The American Lung Association of Kentucky considers the control of toxic air contaminants to be a critical public health issue – critical both in terms of risk to health and to need for prompt action to address this risk. We commend Mayor Abramson and the Louisville Metro Air Pollution Control District for their initiatives in proposing and developing an air toxics regulatory program (STAR Program). The justification for such a program is compelling.

A report released last year by Sciences International, a Virginia consulting firm, revealed startling results: Some chemicals in Louisville's air, including known carcinogens, were measured at levels several hundred times higher than what is considered safe by the Environmental Protection Agency. The study was based on findings from 13 monitoring stations placed at sites around the Louisville area. While the primary focus was on emissions monitored at sites in western Louisville, hazardous emissions also were identified in eastern Jefferson County at the U of L Shelby Campus and as far away as Otter Creek Park in Meade County.

Furthermore, additional studies conducted by the University of Louisville indicate that the emission levels of at least one chemical of particular concern, 1,3-butadiene, are on the rise.

Clearly, this is an area-wide problem of significant proportions. The cumulative risk to public health from the toxic chemicals in our air has been calculated to be higher at some locations than anywhere previously measured in the U.S. Indeed, the findings from the Sciences International study predicted that the cumulative impact of toxic emissions in our community's air could be expected to result in between 130 and 840 additional cancer cases per one million people.

The federal Clean Air Act establishes that air quality standards are to be set at levels necessary to protect public health "with an adequate margin of safety." This safety margin is necessary in order to protect the most sensitive members of the population – children, the elderly, and people with pre-existing heart and respiratory ailments. In the greater Louisville metropolitan area, this sensitive population numbers in the tens of thousands. Children are particularly at risk because their lungs are still in the developmental stages, they breathe in more air in proportion to the size of their lungs and they spend more time out-of-doors.

A report entitled "Childen's Environmental Health in Kentucky," released just last week by the Kentucky Environmental Quality Commission, underscores the need to better protect children from harmful air contaminants. According to the report, a number of studies have linked certain chemical exposures to childhood cancer. The report states that the U.S. Environmental Protection Agency, through its review of 23 peer-reviewed studies of cancer incidence from the past 50 years, has determined that infants up to age two are, on average, ten times more vulnerable to carcinogenic chemicals than adults, and for some cancer-causing agents, are up to 65 times more vulnerable.

A health threat of this magnitude deserves a commensurate response in the form of visionary pollution reduction initiatives -- specifically, a comprehensive, far-reaching air toxics regulatory program. In the absence of national action from the Environmental Protection Agency, Louisville has a unique opportunity to take bold action for the public good – action that will set the community apart as a national leader in protecting public health from the dangerous chemicals in our urban air.

The American Lung Association's national public policy agenda places a high priority on air pollution prevention and control. Our agenda also reflects concern and support for issues of environmental justice. The ALA of Kentucky views Louisville's toxic air pollution both as an environmental justice issue, due to the preponderance of chemical plants in west Louisville, and a broader environmental health concern affecting the entire community.

In addition to posing a severe health threat to our residents, Louisville's toxic air places a stigma on our community that is also detrimental to our economic well-being.

Our comments set forth in this paper will not seek to address every technical aspect of the STAR Program. We acknowledge that there may be legitimate concerns about the regulations raised by other commenters during the informal and formal comment periods, which may justify further clarification of intent or, in some cases, minor modifications to regulations beyond those recommended in this paper. Our comments, therefore, will be primarily general in scope, with only several specific recommendations relevant to certain sections of the regulatory package.

GENERAL COMMENTS

The American Lung Association supports the general framework of the STAR Program, including its basic assumptions, health risk goal (1 in 1 million lifetime cancer risk), regulatory rulemaking process, prioritization of covered chemicals, prioritization of affected companies and timeframe for compliance.

However, while we believe that the draft program's targeted chemicals should be the first level of concern, it has always been our recommendation that the program be comprehensive in scope from its inception. The program, as proposed, falls short of being comprehensive in the number of covered chemicals, especially for existing sources. The monitoring studies conducted to date in our community have not been so thorough as to rule out other possible carcinogenic chemicals in our urban air beyond the 38, which are the primary focus of the STAR Program. We recommend, therefore, that, at a minimum, all 190 chemicals subject to requirements for new and modified sources/processes be applicable to existing sources, at least for the initial information gathering and reporting requirements. Compliance demonstrations for these additional chemicals could be phased in over a longer time frame. We also recommend that other stationary sources, which do not fall in Groups 1 and 2, as defined in Regulation 5.01, be phased into the program.

One of our greatest concerns relates to compliance. The regulations will only achieve the desired results of reducing harmful air contaminants if they effectively force reductions from the companies which exceed the environmental acceptability (EA) levels. We believe that provisions for modification of EA goals, as specified in Regulation 5.21 (Environmental Acceptability for Toxic Air Contaminants) offers companies far too much "wiggle room," and practically guarantees that the district will be bombarded with requests to exceed the 1 in 1 million risk level.

We strongly support the proposed upper limit variance of a 7.5 in 1 million risk (individual stationary source, all P/PE, including new or modified P/PE), which could be granted by the District staff, with the provision that any request to exceed that limitation would have to be approved by the APCD Board. We also urge that language be added to require that the District staff not consider a variance in excess of 1 in 1 million unless the company can demonstrate that it has applied "best available technology for toxics (T-BAT, as defined in Regulation 5.21 and amended per our recommendation as stated

in our Specific Comments section below). Only after such a demonstration should a request to exceed the goal be considered by the District.

We specifically commend the STAR Program's inclusion of amendments to existing regulations and the addition of new regulations relating to excess emissions during startups, shutdowns, and malfunctions (1.07), malfunction prevention (1.20) and enhanced leak detection and repair (1.21). These regulations offer significant opportunity to realize toxics reductions by controlling excess emissions that are reasonably avoidable through better work practices, vigilance and maintenance.

Finally, we realize that control of industrial emissions addresses only one sector of air toxics emission sources. It may be the most significant sector, however, due to the concentration of Rubbertown industries, which results in a localized concentration of chemical contaminants, the impact of which falls hardest on people living and working in the west end of our community. Pollution from other sources, while perhaps accounting for a larger piece of the air toxics pie, is more dispersed throughout the community. That being said, the American Lung Association urges the APCD to establish a timeline, within the framework of the STAR Program, for addressing toxic emissions from area and mobile sources.

SPECIFIC COMMENTS

Regulation 1.20 Malfunction Prevention Program

Section 1 of this regulation narrowly defines "affected facility." We recommend the definition be expanded to include all Group 1 and 2 sources. Including all sources subject to the STAR Program would raise the bar of expectation that companies be vigilant and proactive in instituting best practices.

Regulation 5.20 Methodology for Determining Benchmark Ambient Concentration of a Toxic Air Contaminant

It should be clarified in this regulation that the responsibility for establishing BAC's for all applicable contaminants rests with the Distsrict staff.

Regulation 5.21 Environmental Acceptability for Toxic Air Contaminants

This regulation, along with Regulation 5.01 (Standards for Toxic Air Contaminants and Hazardous Air Pollutants), specifies which lists of chemicals in Regulation 5.23 (Categories of Toxic Air Contaminants) are applicable for existing sources and for new and modified processes/process equipment. We believe that for initial monitoring, emissions inventory development and reporting requirements, the entire list of chemicals in Regulation 5.23 should apply to both new and existing sources. For

existing sources, compliance demonstrations for chemicals in Categories 2 and 3 could be phased in over a longer time frame, as recommended in our General Comments.

In Section 1.1, the definition of best available technology for toxics (T-BAT) should be modified to exclude the consideration of economic factors in cases where emissions exceed the Environmental Acceptability Levels as proscribed in Section 2. The definition should also substitute the word “shall” for “may” in the line beginning, “In determining T-BAT, the District *may*…”

In sections 2.3 and 2.6, modifications of EA goals should only be considered ***if*** the company can demonstrate that it has applied T-BAT.

Section 3.8 should be amended to *require* that, if an EA standard in Section 2.8.1 or 2.8.2 would be exceeded, stationary sources contributing to this exceedance make additional reductions.

SUMMARY

The American Lung Association of Kentucky believes strongly that the need for a comprehensive air toxics regulatory program is critical; we support the general concepts, goals and framework of the STAR Program; and we are confident that the regulatory package can be improved and strengthened for the public good with several modifications.

The U.S. Environmental Protection Agency’s regional office in Atlanta has praised Louisville’s efforts to develop this program in a letter submitted recently by Paul Wagner, an EPA health specialist. The letter reported that the EPA regional staff is “impressed with the regulations,” that they are “on sound technical footing” and that they “place Louisville in the forefront of communities that are addressing air-toxics issues.” These preliminary comments by EPA give credence to the general thrust and underpinnings of the regulatory package.

Above all, the Lung Association recommends that the protection of public health be considered first and foremost in finalizing the details of the STAR Program. After allowing for reasonable public comment, review and revision, we urge that the regulatory package be presented to the APCD Board for final adoption as expeditiously as possible. Thank you for your consideration.

Sincerely,

Barry Gottschalk
Executive Director
American Lung Association of KY